

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 1:16-cv-10181-FDS

DANNY WENG, CHRISTOPHER HART,
MARKUS VALLASTER, SARAH ZESCH,
JOHN STANTON, MICHAEL GOULD, and
COMMONWEALTH SECOND AMENDMENT,
INC.,

Plaintiffs,

v.

WILLIAM B. EVANS, in his Official Capacity as
Commissioner of the Boston Police Department,
and DANIEL C. O'LEARY, in his Official
Capacity as Chief of the Brookline Police
Department,

Defendants.

**DEFENDANT COMMISSIONER EVANS' CROSS-MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Defendant William B. Evans (“Commissioner Evans”), who is sued in his official capacity, hereby moves the Court, pursuant to Federal Rule of Civil Procedure 56, for summary judgment in his favor on all claims brought against him in the instant case by Plaintiffs Danny Weng, Christopher Hart, Markus Vallaster, Sarah Zesch, John Stanton, Michael Gould, and Commonwealth Second Amendment, Inc. (collectively, “Plaintiffs”),¹ and Commissioner Evans hereby opposes Plaintiffs’ Motion for Summary Judgment, ECF No. 56. Plaintiffs bring two claims against Commissioner Evans pursuant to 42 U.S.C. § 1983 for violations of their Second

¹ Plaintiff Gould does not allege any facts against Commissioner Evans. Amended Compl., ECF No. 7, at ¶¶ 52-56 (Apr. 14, 2016). As to Plaintiff Vallaster, counsel for Plaintiffs and counsel for Commissioner Evans agreed in their conference pursuant to D. Mass. Local Rule 7.1(a)(2) to dismiss Plaintiff Vallaster’s claims as moot.

and Fourteenth Amendment rights. Amended Complaint, ECF No. 7, at ¶¶ 62-68 (Apr. 14, 2016). Briefly, Plaintiffs allege that Commissioner Evans unduly restricts licenses to carry firearms. The gravamen of their claims is a purely legal dispute about the scope of the Second Amendment to the United States Constitution (“Second Amendment”), and the applicable legal standard is this Court’s recent decision in Batty v. Albertelli, No. 15-cv-10238-FDS, 2017 WL 740989, at *11-13 (D. Mass. Feb. 24, 2017).

Applying this Court’s analysis in Batty v. Albertelli, Commissioner Evans’ policy of placing “Target & Hunting” restrictions on the firearms licenses of applicants who do not demonstrate special circumstances is “substantially related to the important governmental objective of public safety, and therefore does not violate the Second Amendment.” Id. at *13. Moreover, Plaintiffs’ restricted licenses to carry do not violate their Second Amendment rights because the Second Amendment does not entitle Plaintiffs to unrestricted Class A licenses for self-defense inside or outside the home. Along with their Second Amendment claim, Plaintiffs bring an equal protection claim, but as in Batty, it is undeveloped and fatally deficient. Furthermore, Plaintiff Commonwealth Second Amendment, Inc. lacks standing to bring any of its claims, and as a result, they must be dismissed.

Therefore, for all the foregoing reasons and all the reasons detailed in the accompanying Memorandum of Law, Commissioner Evans respectfully requests that the Court render summary judgment in his favor, dismiss with prejudice all Plaintiffs’ claims and counts against him, and deny Plaintiffs’ Motion for Summary Judgment.

Dated: October 6, 2017

Respectfully submitted,

WILLIAM B. EVANS, in his official capacity
as Commissioner of the Boston Police
Department,

By his attorneys:

Eugene L. O'Flaherty,
Corporation Counsel

/s/ Matthew M. McGarry
Matthew M. McGarry (BBO# 678363)
Assistant Corporation Counsel
City of Boston Law Department
Room 615, City Hall
Boston, MA 02201
(617) 635-4042
matthew.mcgarry@boston.gov

/s/ Peter M. Geraghty
Peter M. Geraghty (BBO# 664197)
Special Assistant Corporation Counsel
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120
(617) 343-4550
peter.geraghty@pd.boston.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2017, this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

Date: October 6, 2017

/s/ Matthew M. McGarry
Matthew M. McGarry

LOCAL RULE 7.1(a)(2) CERTIFICATION

I hereby certify that on October 5, 2017, counsel for Defendant Commissioner Evans conferred with Plaintiffs' counsel in accordance with Local Rule 7.1(a)(2) in connection with this motion, and counsel cooperated to narrow the issues presented in this motion.

Date: October 6, 2017

/s/ Matthew M. McGarry
Matthew M. McGarry